

## **REPORT OF THE DEPUTY CHIEF EXECUTIVE**

### **LICENSING SUB COMMITTEE – 17 JANUARY 2013**

#### **DETERMINATION OF AN APPLICATION FOR A REVIEW OF PREMISES LICENCE UNDER SECTION 52 OF THE LICENSING ACT 2003**

**RYE & DRY (LIFESTYLE EXPRESS), 19 RYHOPE STREET SOUTH,  
RYHOPE, SUNDERLAND SR2 0RN**

**Licensee: Miss Jeyanthi Manikkavasagar**

#### **1.0 PURPOSE OF REPORT**

- 1.1 To consider an application for the review of a premises licence relating to the above-mentioned premises.

#### **2.0 DESCRIPTION OF DECISION**

- 2.1 The Sub-Committee are requested to consider the application and to take such steps as they consider appropriate for the promotion of the licensing objectives.

#### **3.0 INTRODUCTION/BACKGROUND**

- 3.1 An application has been received under Section 51 of the Licensing Act 2003 ('the Act') from Northumbria Police applying for a review of the above-mentioned premises licence on the grounds of the Prevention of Crime and Disorder and the Protection of Children from Harm. The application is attached as Appendix 1.

#### **4.0 CURRENT POSITION**

- 4.1 Once such an application has been received, the Council, in its role as the Licensing Authority, must advertise on, at or near the premises the fact that a review is to take place and invite representations. This notice was displayed at the premises for the statutory period of 28 days commencing on 22 November 2012.
- 4.2 Before determining the application the Council must hold a hearing to consider it and any relevant representations received. No representations have been received.

#### **5.0 REASONS FOR THE DECISION**

- 5.1 To comply with the requirements of Section 52 of the Licensing Act 2003.

## **6.0 ALTERNATIVE OPTIONS**

6.1 None submitted.

## **7.0 RELEVANT CONSIDERATIONS/CONSULTATIONS**

7.1 The provisions of sections 11.16 to 11.23 of the Secretary of State's Guidance (powers of a licensing authority on the determination of a review) apply to this matter.

'The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- to remove the designated premises supervisor, for example because they consider that the problems are the result of poor management;
- to suspend the licence for a period not exceeding three months;

- to revoke the licence.

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.

Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

## **8.0 GLOSSARY**

8.1 No acronyms or abbreviations have been used in this report.

**9.0 LIST OF APPENDICES**

9.1 Appendix 1 - Application Form.

**10.0 BACKGROUND PAPERS**

10.1 None.

# Appendix 1

Sunderland City Council

**Application for the review of a premises licence or club premises certificate under the Licensing Act 2003**

**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form.  
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

**I Chief Inspector Sean McKenna on behalf of Northumbria Police**

*(Insert name of applicant)*

**apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below**

**Part 1 – Premises or club premises details**

<b>Postal address of premises or, if none, ordnance survey map reference or description</b> Rye & Dry (Lifestyle Express) 19 Ryhope Street South Ryhope	
<b>Post town</b> Sunderland	<b>Post code (if known)</b> SR2 0RN

<b>Name of premises licence holder or club holding club premises certificate (if known)</b> Jeyanthi Manikkavasagar
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<b>Number of premises licence or club premises certificate (if known)</b> OOCMPREM00240
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**Part 2 - Applicant details**

I am

Please tick ✓ yes

- 1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)
- 2) a responsible authority (please complete (C) below)
- 3) a member of the club to which this application relates (please complete (A) below)

**(A) DETAILS OF INDIVIDUAL APPLICANT** (fill in as applicable)

Please tick ✓ yes

Mr  Mrs  Miss  Ms  Other title  
(for example, Rev)

**Surname**

**First names**

**I am 18 years old or over**

Please tick ✓ yes

**Current postal  
address if  
different from  
premises  
address**

**Post town**

**Post Code**

**Daytime contact telephone number**

**E-mail address  
(optional)**

**(B) DETAILS OF OTHER APPLICANT**

Name and address

Telephone number (if any)

E-mail address (optional)

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name and address Chief Inspector Sean McKenna Northumbria Police Gillbridge Police Station Gillbridge Avenue Sunderland SR1 3AW
Telephone number (if any) <b>0191 5636655</b>
E-mail address (optional)

**This application to review relates to the following licensing objective(s)**

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please tick one or more boxes ✓

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>



**Please state the ground(s) for review**

**24<sup>th</sup> September 2011**

The premises were visited by a female test purchase operative under 18, who entered the store and was sold a bottle of wine by a male member of staff who did not ask for any identification. Police and Trading Standards officers then went into the store and spoke to the male who stated he was the husband of the premises owner. Further intervention was later held with the premises licence holder and Sunderland Trading Standards department.

**16<sup>th</sup> February 2012**

The local neighbourhood CSO attended the store and spoke to staff regarding age restricted products. The premises was also given a letter from Chief Inspector Jackson of Sunderland Area Command, the letter contained details of legislation for the restrictions on age at which alcohol and tobacco can be sold. The letter informed the premises that they could be subject of another test purchase exercise and to make sure that all staff had suitable training. This letter is attached, appendix 3.

**29<sup>th</sup> October 2012**

A report was received by the Police from a local resident of youths drinking in the children's play area at Beechbrooke, Ryhope. CSOs from the area stopped half a dozen teenage girls aged 14/15yrs drinking alcohol. Attached is a copy of a statement from PC 3411 JORDAN who attended the incident, appendix 1.

**10<sup>th</sup> November 2012**

PC 3411 JORDAN from the Sunderland East was on duty on Ryhope Street South when he identified a female he knew to be aged 16 years who had alcohol in her possession. Attached is a copy of a statement from PC 3411 JORDAN who attended the incident, appendix 2.

**Please provide as much information as possible to support the application**

Northumbria Police take matters of underage sales of age restricted products very seriously. Youth disorder is clearly related to the consumption of alcohol.

- Offences by youths, such as criminal damage, drunken disorderly behaviour and violence is often as a result of underage drinking.
- Youths under 18 are more vulnerable when drunk, particularly when they have been drinking excessively and when unsupervised as is often the case with street drinking.
- Significant public nuisance is also caused when groups of youths congregate in the Local area in the ready expectation of obtaining alcohol. Broken bottles, criminal damage and unruly behaviour by drunken youths causes distress to local residents and reduces the quality of life for those living in the area.

In cases where the Premises Licence Holder takes a responsible attitude in respect of promoting the Licensing Objectives, various schemes have been adopted such as 'Challenge 21 or 25' which has proved useful in tackling underage purchases of alcohol. It is our experience that youth disorder issues and underage drinking in the locality tend to reduce when the Premises Licence Holder the DPS and their staff work in partnership with the responsible authorities.

The premises have clearly demonstrated a disregard for the licensing laws and the duty to protect children from harm. It appears that the premises have already adopted a challenge 21 scheme but are not using it. The premises have CCTV but this has not acted as a deterrent to staff when they have sold alcohol to persons under 18. Officers from Northumbria Police have attended the premises on various occasions and have given advice with regards to underage sales of alcohol, which has clearly been ignored.

Research carried out by Northumbria Police and intelligence that has been received about the store reveals that it is well know by under 18s that alcohol can be easily obtained from the store. This information lead to the test purchase being carried out in September 2011 when the first sale was made. Since this date the Premises Licence Holder and DPS have not changed the way which the premises operate.

The government believes that it is completely unacceptable to sell alcohol to children and suggest that serious consideration be given to revoking a premises licence where there have been sales of alcohol to children, even in the first instance. Northumbria Police request that the Licensing Committee revoke this premises licence. This request is not made lightly but is appropriate in the circumstances, and is as a result of considerable public complaint, poor management and underage sales of alcohol at the premises.

Have you made an application for review relating to the premises before

Please tick ✓ yes

If yes please state the date of that application

Day Month Year

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**If you have made representations before relating to the premises please state what they were and when you made them**

Please tick ✓

yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

**IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION**

**Part 3 – Signatures** (please read guidance note 4)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature   
.....

Date 21/11/12  
.....

Capacity **Chief Inspector**  
.....

<b>Contact name (where not previously given) and postal address for correspondence associated with this application</b> (please read guidance note 6) Sarah Howson Licensing Coordinator Gillbridge Police Station Gillbridge Avenue	
<b>Post town</b> Sunderland	<b>Post Code</b> SR1 3AW
<b>Telephone number (if any)</b> 0191 5636655	
<b>If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)</b> sarah.howson.4672@northumbria.pnn.police.uk	

**Notes for Guidance**

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

<b>WITNESS STATEMENT</b>		Form MG11T
(CJ Act 1967, s.9; MC Act 1980, ss.5A(3) (a) and 5B; MC Rules 1981, r.70)		
Statement of :	<b>Leslie John Jordan</b>	
Age if under 18:	<b>Over 18</b>	(if over 18 insert 'over 18') Occupation: <b>PC 3411</b>
This statement (consisting of _____ page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false, or do not believe to be true.		
Signature:	Date: <b>17/11/12</b>	
Tick if witness is visually recorded <input type="checkbox"/> (supply witness details on rear)		

I am currently a Police Beat Manager with the Sunderland East Neighbourhood Police team.  
 At 6.30pm on Monday 29 October 2012 I was on duty when as the result of a radio message ( fwin 906) reporting youths suspected of carrying drink to a childrens play area in Beechbrooke, Ryhope.

I attended the area with other officers and spoke to [REDACTED] 15yrs [REDACTED] of [REDACTED] [REDACTED] Ryhope who was in possession of two bottles of Frosty Jacks cider.

I then took [REDACTED] to her home address and interviewed her under caution in the presence of her grandmother [REDACTED].

Q. Where did you get the cider from.

R. Osmans tonight ( Osmans was the previous name of Rye and Dry off licence, 19 Ryhope St South, Ryhope )

Q. Who bought them.

R. ME

Q. How much did they cost.

R. Five pounds something.

Q. Did the shop keeper ask how old you are.

Signature		Signature witnessed by	
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NORTHUMBRIA POLICE

**RESTRICTED (when complete)**

Page 2 of 5

Statement of Pc 3411 Jordan – cont.

R. NO

Q. Who was the shopkeeper.

R AN ASIAN MAN, HE WAS THE ONLY MAN IN THE SHOP.

Q Did you go in with anyone else

R ME AND ANOTHER GIRL [REDACTED] 15 YRS

Q Did you realise that buying alcohol under age is prohibited.

R YES

Q Did you realise that the shopkeeper commits an offence selling you alcohol under age.

R YES

Q Did you buy anything else

R NO, JUST BOTTLES OF FROSTY JACKS

Q Did anything else happen.

R YES, I WENT IN AGAIN FOR ANOTHER BOTTLE.

Q Was it the same shopkeeper

R YES

Q When were you served

R ABOUT FORTY FIVE MINUTES BEFORE I WAS STOPPED.

I then informed [REDACTED] that the facts would be reported.

He grandmother granted permission for [REDACTED] to return to the shop with officers.

At 7pm that evening I attended the off licence Rye and Dry, 19 Ryhope Street South with

[REDACTED] and found the shop owner Jeyanthi Manikkavasagar present with her uncle

the defendant Mr Nagenthiran Sangarapillai 52yrs [REDACTED] a Sri Lanken national.

[REDACTED] pointed to him and I asked ' Do you recognise this man'

Signature	X	Signature witnessed by	
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2004/5(1)

Statement of PC 3411 Jordan – cont

She replied ' YES HE SERVED ME WITH THREE BOTTLES OF FROSTY JACKS'

I ascertained that he could understand very little english and asked the shop owner to translate what [REDACTED] had said.

I checked the serial numbers of 1.5ltr bottles of Frosty Jack cider for sale in the shop which matched those seized from [REDACTED] which have been retained in police property ref PIN8184J/12 – 01

The shop owner stated that her uncle had been covering the shop when she was having a shower.

At 7pm on Wednesday 31 October 2012 I returned to the shop and requested a copy of the store security CCTV footage of the incident on 29 October, I provided the owner with a blank VHS video tape. She has since failed to provide a copy tape.

At 6pm on Monday 5 November 2012 at Gillbridge Avenue Police Station I interviewed the defendant under caution assisted by a Tamil speaking interpreter [REDACTED]

Q Were you working in the off licence Rye and Dry, 19 Ryhope Street South on the evening of Monday 29 October 2012.

R YES I WAS THERE TO HELPTHE OWNER OF THE SHOP.

Q What is your relationship with the owner.

R I'M HER MATERNAL UNCLE

Q Are you paid to work in the shop.

R NO, I'M A RELATED PERSON, I DON'T GET PAID

Q Do you have a job.

Signature	X	Signature witnessed by	
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2004/5(1)

Statement of PC 3411 Jordan – cont

R I WORKED IN LONDON AS A LABOURER IN A FOOD FACTORY. THE COMPANY CLOSED. I'M UNEMPLOYED.

Q Do you have any training to work in an off licence selling alcohol.

R I DON'T HAVE ANY TRAINING BUT I KNEW I SHOULD'NT SELL ALCOHOL TO UNDERAGE PEOPLE.

Q What age can a person legally buy alcohol.

R 18 CAN BUY ALCOHOL AT THE SHOP

Q At 7pm on Monday 29 October I came into the shop with a 15year old girl who stated that you had sold her three bottles of Frost Jacks cider that night. Did you sell this girl the cider.

R YES, BEFORE THAT I ASKED HER CERTIFIED CARD SHE TOLD ME SHE FORGOT TO BRING THE CARD.

I then pointed out the offence of selling alcohol to a minor contrary to section 146 Licencing Act 2003.

Q Do you understand.

R YES

Q Have you sold alcohol to this girl before.

R NO

Q How old do you think she was.

R OVER 21

Q Did you ask her age.

R NO I ASKED HER FOR HER CARD

Q Do you wish to tell me anything else.

Signature	X	Signature witnessed by	
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2004/5(1)



Statement of PC 3411 Jordan – cont

R NO, IT'S THE FIRST TIME SINCE LIVING IN THE UK THAT I'VE BEEN TO THE POLICE STATION

I then issued the defendant an £80 Penalty Notice ref. 10/A0087283.

I advised the defendant that in view of his poor english he should not sell any alcohol at the shop, to which he agreed and warned him of the consequences should he be caught again selling alcohol to a minor.

Pc 3411 L. J.Jordan

Signature	X	Signature witnessed by	
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2004/5(1)

NORTHUMBRIA POLICE

**RESTRICTED (when complete)**

Page 1 of 3

<b>WITNESS STATEMENT</b>		Form MG11T
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Statement of :	<b>Leslie John Jordan</b>	
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This statement (consisting of _____ page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false, or do not believe to be true.		
Signature:	Date: <b>17/11/12</b>	
Tick if witness is visually recorded <input type="checkbox"/> (supply witness details on rear)		

I am currently a Police Beat Manager with the Sunderland East Neighbourhood Police team. At 5.10pm on Saturday 10 November 2012 I was on duty on Ryhope Street South approximately fifty yards east of the Rye and Dry off licence where I saw a teenage girl I know as [REDACTED] 16yrs [REDACTED] with another girl [REDACTED] 16yrs.

[REDACTED] was carrying a bag containing a pack of twelve cans of Fosters. She told me that she had bought the alcohol from Rye and Dry. Lager seized police property ref PIN 2749K/12 -01.

We then walked back to the shop and at this point the defendant was on the pavement outside. [REDACTED] pointed towards him.

Q Is this the man who sold you this lager

R YES THAT'S HIM

The defendant did not reply.

I then entered the shop with the defendant and informed the shop owner what had happened. She stated that she had just returned to the shop, her uncle the defendant had been in charge for the past two or three hours.

I requested a copy of the security CCTV footage.

Signature		Signature witnessed by	
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2004/5(1)

NORTHUMBRIA POLICE

**RESTRICTED (when complete)**

Page 2 of 3

At 5.35pm that afternoon at [REDACTED] Ryhope I interviewed [REDACTED] under caution in the presence of her mother [REDACTED]

Statement of PC 3411 Jordan – cont

Q [REDACTED] you've been caught tonight with 12 cans of Fosters lager on Ryhope St South and pointed out the male shopkeeper to me from Rye and Dry off licence who sold you the lager. Is that correct.

R YES

Q When did you buy the lager

R JUST BEFORE WE SEEN YOUS

Q What happened in the shop.

R I WENT IN ALONE AND ASKED HOW MUCH THE LAGER WAS. HE SAID IT WAS TEN POUNDS AND I BOUGHT THEM. I WAS SURPRISED THAT HE DID'NT ASK HOW OLD I WAS. I PAID THE MONEY AND LEFT.

Q Did you realise it is an offence to buy alcohol under age.

R I KNEW I SHOULD'NT HAVE BOUGHT IT

Q Who was the drink for.

R US TWO

Q Have you ever bought alcohol from this shop before.

R NO

Q How often do you use the shop

R ABOUT A WEEK AND A HALF AGO

Q Has this shopkeeper served you before

R NO HE HAS'NT I'VE SEEN HIM BEFORE BUT HE HAS'NT SERVED ME.

Q Did you ask for a receipt

Signature	X	Signature witnessed by	
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2004/5(1)

R YES BUT HE SAID HE COULDN'T GIVE ME ONE

I then informed her that the facts would be reported.

Statement of Pc 3411 Jordan – cont

At 6.10pm I returned to the shop and viewed the CCTV footage , Camera 2 which showed [REDACTED] entering the shop alone and buying the case of lager.

The shop owner on this occasion was able to provide a copy tape. ( Police property Ref PIN 2749K/12 – 02 )

I confirmed with the shop owner that the DPS ( Dedicated Premise Supervisor) was her cousin Baskaran Mugunthan who lived in Newcastle. I then made a number of phone calls in order to speak with the DPS using telephone numbers provided by the shop owner and from Police licensing records. I failed to make contact with the DPS but did speak to a man calling himself [REDACTED] a friend of the DPS, apparently the DPS was in London, no return date was known.

Pc 3411 L. J.Jordan

Signature	X	Signature witnessed by	
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2004/5(1)

Dear Sir/Madam

Licensing Act 2003  
Children and Young Persons (Protection from Tobacco) Act 1991

The above legislation makes restrictions on the age at which alcohol and tobacco may be sold. The age for the retail sale of both alcohol and tobacco at off licence premises is 18 years. In order to test the compliance of businesses with this requirement Trading Standards and Northumbria Police recruit volunteers who attempt to purchase either alcohol or tobacco. The sale of either product to a person under 18 is an offence that could result in prosecution for the seller or the business. Between now and the end of December, Trading Standards and Northumbria Police will be conducting test purchase exercises across the Sunderland City Council area. Your premises may be one of those visited.

In relation to the Licensing Act 2003, since 1 October 2010 among the mandatory conditions added to all licenses was a condition requiring that you should have an age verification policy whereby persons appearing to be under 18 are to be challenged to produce identification bearing a photograph, date of birth and hologram. Some licenses may have conditions specifying a higher age in their conditions. It is your responsibility to ensure that all staff have had suitable training to enable them to fulfil this condition.

Yours faithfully,

Richard Jackson  
Chief Inspector  
Sunderland Area Command